

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 SPORTS SHINKO CO., LTD., etc.,) CV 04-00124 ACK-BMK
5 Plaintiff,) Honolulu, Hawaii
6 vs.) March 6, 2006
7 QK HOTEL, LLC, a Hawaii) 10:30 A.M.
8 limited liability company,) Status Conference
9 Defendant.)
10)
11)
12 SPORTS SHINKO (USA) CO., LTD.,) CV 04-00125 ACK-BMK
13 Plaintiff,)
14 vs.)
15 PUKALANI GOLF CLUB, LLC,)
16 etc., et al.,)
17)
18 Defendants.)
19)
20)
21 SPORTS SHINKO (USA) CO., LTD.,) CV 04-00126 ACK-BMK
22 Plaintiff,)
23 vs.)
24 KIAHUNA GOLF CLUB, LLC,)
25 et al.,)
Defendants.)
)
SPORTS SHINKO CO., LTD., etc.,) CV 04-00127 ACK-BMK
Plaintiff,)
vs.)
OR HOTEL, LLC, etc.,)
Defendant.)
)

1 SPORTS SHINKO (USA) CO., LTD.,) CV 04-00128 ACK-BMK
2)
3 Plaintiff,)
4 vs.)
5 MILILANI GOLF CLUB, LLC, etc.,)
6 Defendant.)
_____)

9 APPEARANCES:

10 For the Plaintiffs: PAUL ALSTON
11 GLENN T. MELCHINGER
12 Alston Hunt Floyd & Ing
American Savings Bank Twr.
1001 Bishop St., Fl. 18
Honolulu, HI 96813

13 For the Defendants ROBERT A. MARKS
14 KG Holdings, LLC: Price Okamoto Himeno & Lum
15 Ocean View Ctr.
707 Richards St., Ste. 728
Honolulu, HI 96813

16 For the Defendant WILLIAM A. BORNDER
17 Franklin K. Mukai: JOHN REYES-BURKE
Burke McPheeters Bordner &
Estes
Pacific Guardian Ctr.
Mauka Twr.
737 Bishop St., Ste. 3100
Honolulu, HI 96813

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21 Official Court Reporter: Debra Kekuna Chun, RPR, CRR
United States District Court
300 Ala Moana Blvd. Ste. C285
Honolulu, HI 96850
(808) 534-0667

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24 Proceedings recorded by machine shorthand, transcript
25 produced with computer-aided transcription (CAT).

1 MONDAY, MARCH 6, 2006 10:36 O'CLOCK A.M.

2 THE CLERK: Calling the cases of Civil Number
3 04-00124 ACK-BMK, 04-00125, 04-00126, Civil Number
4 04-00127, Civil Number 04-00128 ACK-BMK. This is the
5 Sports Shinko Company cases versus various defendants.
6 This hearing has been called for a Status Conference.

7 Counsel, your appearances, please.

8 MR. ALSTON: Good morning, Your Honor. Paul
9 Alston and Glenn Melchinger, appearing for the plaintiffs.

10 THE COURT: Good morning.

11 MR. MARKS: Good morning, Your Honor. Robert
12 Marks for the KG defendants.

13 THE COURT: Good morning.

14 MR. MARKS: William Bordner and John Reyes-Burke
15 for defendant Mukai.

16 THE COURT: Good morning. Please be seated.

17 The reason I called this session is in reading
18 the opposition last week to the defendant's motion to
19 dismiss, at the bottom of page 8 of the opposition it
20 says -- and I'm concerned about a possible conflict of
21 interest I have because of my stock holdings in Bank of
22 Hawai'i. And at the bottom of page 8 it says, "In
23 exchange, defendants agreed to, number one, pay
24 approximately \$2 million in cash; number two, assume a
25 mortgage held by Bank of Hawai'i with a balance of about

1 witnesses.

2 MR. MARKS: Your Honor, I don't disagree with
3 what Paul said. I believe that the bank's not at risk;
4 that its debt is well-secured and is current -- the
5 payment on it is current; so I don't believe there's any
6 adversity between any of the parties and Bank of Hawai'i,
7 nor is the bank at risk in the litigation.

8 THE COURT: Will counsel guaranty to me that the
9 bank's not going to lose any money on this?

10 MR. MARKS: That's correct, Your Honor. I can't
11 imagine how that would happen, especially with their lien
12 interests.

13 THE COURT: The reporter has that down.

14 But Sports Shinko is in some sort of a
15 receivership?

16 MR. MARKS: Not any longer, Your Honor.

17 THE COURT: Pardon me?

18 MR. MARKS: Not any longer. There was a
19 trustee, a bankruptcy trustee, appointed by the Osaka
20 district court. The bankrupt proceedings have closed, the
21 trustee has been discharged, the stock was purchased out
22 of bankruptcy by Goldman Sachs Companies, and so there is
23 no longer any receiver or trustee overlay to the case at
24 all.

25 THE COURT: What about the rights of -- I mean,

1 there's mention of rights of creditors having -- their
2 interests have been impacted by these allegedly fraudulent
3 transactions.

4 MR. MARKS: Our answer to that, Your Honor, is
5 that there has been no adverse impact on any creditor;
6 that the creditor and the debtor in this case is basically
7 the same person. There's now a successor in the form of a
8 new shareholder of the same companies, but the -- if there
9 were creditors who were injured, it would have been Japan
10 Bank creditors, and they're not parties. So as far as we
11 can tell, there's no proper plaintiff and there's no
12 proper claim under the UFTA, but I'm sure Paul disagrees
13 with that, Your Honor.

14 MR. ALSTON: I do disagree, Your Honor. There
15 were loans. There were creditors. As a result of the
16 bankruptcy of Sports Shinko Japan, basically the claims of
17 creditors were resolved and a new shareholder stepped in
18 to take control of the Sports Shinko entities. And that
19 was, as Mr. Marks indicated, an affiliate -- distant
20 affiliate of Goldman Sachs. And now the matter is being
21 prosecuted for the benefit of the new owners of the
22 various entities.

23 MR. MARKS: Your Honor, I trust you're not all
24 that interested in getting to the merits of a motion,
25 but --

7 DATED at Honolulu, Hawaii, March 6, 2006.

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